

FINDINGS OF FACT

1. Hillsborough County is a "public employer" of personnel in its Department of Corrections, as defined by RSA 273-A:1 X.
2. The American Federation of State, County and Municipal Employees, Local 3657, is the duly certified bargaining agent for personnel employed by its Department of Corrections.
3. The County and the Union have a collective bargaining relationship which extended through their last collective bargaining agreement (CBA) which expired on June 30, 1990. They have operated without and negotiated for a new CBA since then, including the use of mediation and fact finding.
4. On July 19, 1989, the then Director of the Department of Corrections, Thomas Neumayer, directed a memo to "all personnel" which announced a "new disciplinary program" to be effective July 24, 1989. (County Ex. No. 1) It contained a progressive disciplinary procedure which included "abuse of sick leave" as a Class I violation. Three offenses of a Class I violation within two years is cause for termination under the program.
5. On July 24, 1989, Jerome was hired by the County as a Correctional Officer. He developed absentee problems starting on January 29, 1990 when he was cited for unauthorized absence from his shift because he did not call his supervisor. Nine disciplinary events followed: letter of warning, February 9, 1990; counseling form, October 26, 1990; two day suspension, January 15, 1991; counseling form, January 25, 1991; letter of reprimand, June 10, 1991 (County Ex. Nos. 2, 3 and 5); five day suspension, December 20, 1991; three day suspension, February 19, 1992; counseling form, September 9, 1992; and letter of reprimand, December 16, 1992.
6. On March 5, 1993, Lt. David Dionne again cited Jerome for abuse of sick leave, namely, between January 1, 1993 and March 5, 1993, he was absent from work 11 of 48 days, seven of which were in conjunction with days off. A disciplinary

hearing held March 23, 1993 found that Jerome had had five offenses Class I violations within two years and terminated him effective March 25 or 26, 1993, depending on which document is referenced.

7. Lt. David Dionne wrote a memo to Captain Bedard on March 29, 1993 stating that he (Dionne) was approached by Stephen Powers who sought reinstatement of Jerome. Dionne advised that he did not have the authority to overrule the decision of O'Mara. (County Ex. No. 4)
8. Jerome filed a grievance over his termination on April 8, 1993, the 10th working day from March 25, 1993 referenced in the Disciplinary Hearing report and the 9th working day from March 26, 1993 referenced in the Disposition Form signed by Supt. James O'Mara. The grievance was denied by O'Mara on April 15, 1993 on the merits and as being beyond the ten days referenced in Article XV, Section 1 (b) of the CBA. (Attachments No. 1, 4 and 5 to County's answer.)
9. James Vacca, union/chapter chairman, testified that he delivered the grievance to the Superintendent's office at 6:00 p.m. on April 8th by placing it in the mailbox. The office was closed at the time. He used this technique because the duty lieutenant would not accept receipt of the document.
10. On April 13, 1993, O'Mara sent a memo to the then Director of Human Resources stating that he expected this grievance to proceed to the Commissioners' level. Instead, the union filed this ULP on September 27, 1993.

DECISION AND ORDER

We find the grievance to have been timely filed at the superintendent's level. Assuming, arguendo, that the March 25, 1993 date is the relevant one, the Union did what was necessary to divest itself of control of the grievance on or before the expiration of the tenth work day within the meaning of Article 15.6 of the CBA. The contract requires only that the grievance be presented within ten days. We find it was. There is no requirement that the superintendent's office be open or that he be present to accept it. Were this the case, the grievance process could be thwarted by quirks of fate as to who was in the office at a given moment. Further, there appears to have been an accepted practice whereby grievances could be processed to the

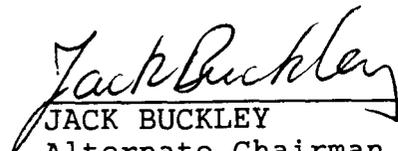
superintendent's level by giving them to his secretary or "dropping them in the box." Vacca fulfilled these requirements and specifications notwithstanding that he did it after the superintendent and/or his secretary had left for the day.

Turning to the merits of the case, we find that Jerome's history of sick leave utilization was abusive generally as well as within the meaning of the Employee Discipline procedures included as Attachment No. 3 to the County's answer. We arrive at that conclusion notwithstanding the Tuxill treatment letter of March 15, 1993, noting that the County afforded Jerome five Class I violations, two more than provided in the Employee Discipline procedures. The discharge was reflective of progressive discipline procedures and supported by unrefuted evidence of excessive absences.

Accordingly, the ULP is DISMISSED.

So ordered.

Signed this 28th day of January, 1994.



JACK BUCKLEY
Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding.
Members Seymour Osman and E. Vincent Hall present and voting.